

Message Text

LIMITED OFFICIAL USE

PAGE 01 STATE 217491

21
ORIGIN ARA-20

INFO OCT-01 ISO-00 L-03 COME-00 EB-12 H-03 CIAE-00 INR-11

NSAE-00 RSC-01 AID-20 /071 R

DRAFTED BY ARA/CEN/CR:JGSULLIVAN:RMC

APPROVED BY ARA/CEN: DAVID LAZAR

LA/GC:GHARKINS (DRAFT)

L/ARA:DGANTZ (DRAFT)

LA/GC:ILEVY (DRAFT)

----- 109739

R 022232Z OCT 74

FM SECSTATE WASHDC

TO AMEMBASSY SAN JOSE

LIMITED OFFICIAL USE STATE 217491

E.O. 11652: N/A

TAGS: ECIND CS

SUBJECT: DISCRIMINATORY CONSTRUCTION LEGISLATION

REF: SAN JOSE 3056

1. FOLLOWING COMMENTS ARE OFFERED ON COSTA RICAN LAWS 5501 AND 5518 AND IMPLEMENTING REGULATIONS.

2. INITIAL READING OF ARTICLE 2DF LAW 5518 PRESENTS QUESTIONS AS TO LAWS' EFFECTS ON A.I.D. CONTRACTS, BOTH DIRECT AND A.I.D.-FINANCED. OBVIOUSLY AID WOULD HAVE SERIOUS PROBLEMS WITH ANY LAWS WHICH REQUIRE DISCRIMINATION IN FAVOR OF CERTAIN FIRMS SEEKING SUCH CONTRACTS. REQUEST EMBASSY CLARIFY COSTA RICAN INTERPRETATION OF ARTICULO 2 - "LAS DISPOSICIONES DE ESTA LEY Y LOS QUE LE SEAN COMPLEMENTARIAS, SE APPLICARAN SIN PERJUICIO DE LO CONVENIDO EN CONTRATOS CON ENTIDADES INTERNACIONALES DE CREDITO." IN PARTICULAR:

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 STATE 217491

A. IS A.I.D. CONSIDERED TO BE AN "ENTIDAD INTERNACIONAL"

DE CREDITO"?

B. IF IT IS, DOES THE ABOVE-QUOTED LANGUAGE MEAN THAT PROVISIONS OF LAWS WOULD NOT APPLY TO ANY CONTRACTS FINANCED BY A.I.D. (WHETHER OR NOT A.I.D. IS A PARTY)?

DOES IT MEAN THAT ESCALATOR CLAUSES MAY NOT BE USED IN SUCH CONTRACTS; OR DOES IT PERMIT SUCH CLAUSES IN SUCH CONTRACTS REGARDLESS OF CONTRACTOR NATIONALITY?

3. ASIDE FROM A.I.D. CONCERNS, AS WRITTEN, LAW IS POTENTIALLY DISCRIMINATORY AGAINST FOREIGN FIRMS, BUT DOES NOT APPEAR TO APPLY RETROACTIVELY; E.G., TO EXISTING

CONTRACTS. IS THIS CORRECT? WE HAVE LOOKED AT U.S.-COSTA RICA FRIENDSHIP COMMERCE AND NAVIGATION TREATY OF JULY 10, 1851 (RS 62; 6 BEVANS 1011) AND CONCLUDE THAT PREFERENTIAL TREATMENT ESTABLISHED HERE FOR NATIONAL CONTRACTORS IS NOT A VIOLATION OF TREATY PROVISIONS.

4. CLARIFICATION WOULD ALSO BE WELCOME ON WHETHER ON NON-A.I.D. RELATED CONTRACTS, LAWS WILL PRECLUDE NEGOTIATIONS BY FOREIGN CONTRACTORS OF THEIR OWN ESCALATOR CLAUSES. OR, IF CONTRACT RESULTS FROM BIDDING, WOULD BID DOCUMENTS CONTAIN ESCALATOR CLAUSE AND THEN PROHIBIT BID BY FOREIGN FIRM; OR WOULD BID DOCUMENT PROVIDE THAT ESCALATOR CLAUSE WOULD NOT BE APPLICABLE TO FOREIGN FIRM

BIDDER? (OBVIOUSLY, IN ABSENCE OF ESCALATOR CLAUSE, FOREIGN FIRM WOULD BUILD INTO BIDS ANTICIPATED PRICE INCREASES. THIS COULD AFFECT THEIR ABILITY TO COMPETE WITH LOCAL FIRMS.)

5. REGARDING THE TRANSITORY PROVISION OF LAW 5518 REQUIRING NATIONAL AND FOREIGN FIRMS ALIKE WITH EXISTING CONTRACTS TO APPLY FOR THE BENEFITS OF LAW 5518, WE WOULD FIRST LIKE TO KNOW WHETHER THE REGULATIONS HAVE GONE INTO EFFECT. IF TIME PERMITS, EMBASSY SHOULD CONSIDER EFFORTS TO INFORM U.S. CONSTRUCTION FIRMS WITH EXISTING CONTRACTS TO REGISTER SO AS TO RECEIVE BENEFITS OF THE PROVISION.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 STATE 217491

MAW

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptoning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CONSTRUCTION INDUSTRY, TRADE DISCRIMINATION, LAW, FOREIGN INVESTMENTS, CONTRACTS
Control Number: n/a
Copy: SINGLE
Draft Date: 02 OCT 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: CollinP0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE217491
Document Source: CORE
Document Unique ID: 00
Drafter: JGSULLIVAN:RMC
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740279-0594
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19741078/aaaacost.tel
Line Count: 108
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN ARA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: SAN JOSE 3056
Review Action: RELEASED, APPROVED
Review Authority: CollinP0
Review Comment: n/a
Review Content Flags:
Review Date: 11 SEP 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <11 SEP 2002 by martinml>; APPROVED <03 MAR 2003 by CollinP0>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: DISCRIMINATORY CONSTRUCTION LEGISLATION
TAGS: EIND, CS
To: SAN JOSE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005